

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,)	
)	
)	
Plaintiff,)	C.A. No. 22-590-GBW
)	
v.)	JURY TRIAL DEMANDED
)	
ZYNGA INC.,)	
)	PUBLIC VERSION
)	
Defendant.)	

**IBM’S RESPONSE TO DEFENDANT ZYNGA INC.’S STATEMENT OF DISPUTED
MATERIAL FACTS IN SUPPORT OF ITS OPPOSITION TO IBM’S MOTION FOR
SUMMARY JUDGMENT #3 THAT THE APPENDICES TO THE YELON PATENT
APPLICATION ARE NOT PRIOR ART TO THE ASSERTED CLAIMS OF U.S.
PATENT NO. 7,702,719 (“3RSOF”)**

OF COUNSEL:

John M. Desmarais
Karim Z. Oussayef
Tamir Packin
Raymond N. Habbaz
Benjamin Rodd
Caitrienne Feddeler
Michael Hilyard
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Tel: (212) 351-3400

Tuhin Ganguly
Sumeet Dang
DESMARAIS LLP
1899 Pennsylvania Avenue NW, Suite 400
Washington, D.C. 20006
Tel: (202) 451-4900

Michael R. Rhodes
DESMARAIS LLP
101 California Street
San Francisco, CA 94111
Tel: (415) 573-1900

Dated: April 29, 2024
11477970 / 00311.00032

Public Version Dated: May 6, 2024

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Andrew L. Brown (#6766)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
abrown@potteranderson.com

*Attorneys for Plaintiff International Business
Machines Corporation*

Pursuant to paragraph 14(b) of the Court's Amended Scheduling Order (D.I. 89), IBM sets forth the following responses to "Zynga Inc.'s Concise Statement Of Disputed Material Facts As To Which There Is A Genuine Issue To Be Tried In Support Of Its Opposition To IBM Corp.'s Motion For Summary Judgment #3 That The Appendices To The Yelon Patent Application Are Not Prior Art To The Asserted Claims Of U.S. Patent No. 7,702,719" (D.I. 363.)

I. RESPONSES TO DEFENDANT'S STATEMENT OF DISPUTED FACTS

1. **Disputed.** Zynga's "fact" is mere attorney argument without citation to any evidence other than IBM's brief. The Appendices to Yelon Patent Application are not properly incorporated by reference for the reasons explained in IBM's opening brief and reply brief in support of its motion. The effectiveness of a purported incorporation by reference language "is a question of law," as Zynga recognizes in its brief. (D.I. 362 at 2 (citing *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1283 (Fed. Cir. 2000)).)

2. **Disputed.** IBM does not contest that the Yelon patent includes the quoted language but disputes that the incorporation is a proper incorporation by reference for the reasons explained in IBM's opening brief and reply brief in support of its motion. The effectiveness of a purported incorporation by reference language "is a question of law," as Zynga recognizes in its brief. (D.I. 362 at 2 (citing *Advanced Display*, 212 F.3d at 1283).)

OF COUNSEL:

John M. Desmarais
Karim Z. Oussayef
Tamir Packin
Raymond N. Habbaz
Benjamin Rodd
Caitrienne Feddeler
Michael Hilyard
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Tel: (212) 351-3400

Tuhin Ganguly
Sumeet Dang
DESMARAIS LLP
1899 Pennsylvania Avenue NW, Suite 400
Washington, D.C. 20006
Tel: (202) 451-4900

Michael R. Rhodes
DESMARAIS LLP
101 California Street
San Francisco, CA 94111
Tel: (415) 573-1900

Dated: April 29, 2024
11744970 / 00311.00032

Public Version Dated: May 6, 2024

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

By: /s/ David E. Moore

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Andrew L. Brown (#6766)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
abrown@potteranderson.com

*Attorneys for Plaintiff International Business
Machines Corporation*